



Vice President and General Counsel  
202-687-5417

May 23, 2003

BY FEDERAL EXPRESS

Ms. Nancy P. Klingler  
Area Case Director  
U.S. Department of Education  
The Wanamaker Building  
100 Penn Square East, Suite 511  
Philadelphia, PA 19107

RECEIVED

MAY 27 2003

STUDENT FINANCIAL ASSISTANCE

Dear Ms. Klingler:

Georgetown University ("Georgetown" or the "University") is pleased to have the opportunity to respond to the letter from John S. Loreng to John J. DeGioia, dated April 18, 2003 ("Loreng letter"), concerning a complaint filed with your office by [REDACTED] and Security on Campus, Inc. We appreciate your office's willingness to extend the time for submitting Georgetown's response until May 23, 2003. Before responding to each of Mr. Loreng's numbered requests,<sup>1</sup> Georgetown sets forth in some detail its position on the critical question raised by the complaint.

The complaint questions the legality under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, as amended, 20 U.S.C. § 1092(f) ("Clery Act"), of Georgetown's conditioning the disclosure to [REDACTED] of certain information about the outcome of student disciplinary proceedings on her agreement to maintain the confidentiality of that information. As the discussion below makes clear, Georgetown's challenged action and the policy on which it is based not only comply with the Clery Act but also are required by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. § 1232g ("FERPA") and its implementing regulations, 34 C.F.R. Part 99. Georgetown is committed to protecting the security and privacy of all of its students and believes its policy and practice in this area are consistent with that goal and comply fully with both the letter and the spirit of federal law.

---

<sup>1</sup> Documents produced by Georgetown in response to Requests 1-10 of Mr. Loreng's letter are appended hereto, either labeled Attachments A-F, respectively, or numbered beginning with GU-0000001.

A. Georgetown's Policy

Georgetown's student disciplinary system exists to handle infractions of University rules and regulations articulated in its Student Code of Conduct. Founded on the principles of fostering community, upholding the common good, and respecting the individual, the system provides an alleged violator the opportunity to respond to complaints brought against him or her and to offer a defense. See GU-0000002-03, and 0000009-0. A student found responsible for a violation—whether by a judicial board or by administrative action—is held accountable and subject to sanctions under the Code. The system does not function as a court of law, or as a substitute for civil or criminal processes. See GU-0000003-04. It is instead designed as an additional, educational system for processing of complaints brought against University students by other members of the Georgetown community or third parties, and its procedures and sanctions reflect that educational focus. See *id.* and GU-0000009-0000010.

Georgetown's student discipline system is also a confidential system. That commitment to confidentiality reflects the University's deep respect for student privacy and its considered view that confidential proceedings best serve the system's educational mission. See *id.* That protection of the confidentiality of student information, however, is also in substantial part required by federal law. FERPA and its implementing regulations generally prohibit disclosure of personally identifiable information from education records, including student disciplinary records, without the student's written consent. United States v. Miami University, 294 F.3d 797, 811-812 (6th Cir. 2002).<sup>2</sup>

---

<sup>2</sup> In Miami University, the court held that FERPA reflects "a base Congressional assumption that student disciplinary records are . . . protected from disclosure." *Id.* at 812. The court found that "otherwise protected student disciplinary records may be released" in only "two particular situations"—subsections (a)(13) and (a)(14)—and "even then, Congress significantly limit[ed] the amount of information that an institution may release and the people to whom the institution may release such information." *Id.* Based on a balancing of the privacy interests of the accused and the victim's and public's interest in the outcome, the court said, Congress "carefully permitted schools to release bits of that information while retaining a protected status for the remainder." *Id.* at 813. "[P]ublic access to disciplinary proceedings," the court held, "may not only make student disciplinary proceedings too costly as a regular disciplinary tool but . . . may also destroy the proceedings' effectiveness as part of the teaching process." *Id.* at 821 (quoting Goss v. Lopez, 419 U.S. 565, 583 (1975)) (internal punctuation omitted). See 60 Fed. Reg. 3,464, 3,464 (Jan. 17, 1995) (acknowledging comments "that to allow the release of student disciplinary records to the public without consent would compromise what

FERPA's prohibition of the non-consensual disclosure of student disciplinary records is subject to two exceptions that relate to the disclosure of information regarding the outcome of student disciplinary proceedings. Both of these exceptions permit the institution to disclose certain information about disciplinary outcomes. First, subsection 99.31(a)(13) ("subsection (a)(13)") provides that an institution may disclose to "a victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense . . . the final results of the disciplinary proceeding conducted by the institution . . . with respect to that alleged crime or offense . . . regardless of whether the institution concluded a violation was committed." See 20 U.S.C. § 1232g(b)(6)(A); 34 C.F.R. § 99.31(a)(13).

This exception accommodates within the FERPA scheme the requirement imposed by the Clery Act that "both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault." 20 U.S.C. § 1092(f)(8)(B)(iv)(II). Whereas FERPA would otherwise prohibit such a disclosure to the accuser, subsection (a)(13) clarifies that such information may now be disclosed, subject to its terms. Consistent with the Clery Act, disclosure under subsection (a)(13) is explicitly limited to the "victim" of the alleged offense; it does not permit the institution to publicize the results of a disciplinary proceeding more broadly. Further, as is the case with most of the exceptions to FERPA's general nondisclosure rule, a subsection (a)(13) disclosure may be made "only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student." 34 C.F.R. § 99.33(a)(1); see id. § 99.33(c) (identifying exceptions not subject to the non-redisclosure requirement, but omitting § 99.31(a)(13) from the list). Thus, the regulations explicitly condition subsection (a)(13) disclosures on the recipient's agreement not to redisclose the information.

The second exception, reflected in subsection 99.31(a)(14) ("subsection (a)(14)"), provides that an institution may disclose generally to the public the final results of a disciplinary proceeding involving an alleged perpetrator of a crime of violence or a non-forcible sex offense, where there is a finding of violation of institutional rules or policy. See 20 U.S.C. § 1232g(b)(6)(B); 34 C.F.R. § 99.31(a)(14). In contrast to subsection (a)(13), subsection (a)(14) disclosure is allowed only where the accused student is found responsible for the specified conduct. In further

---

[postsecondary institution officials] believe to be the fundamental educational mission of the campus judicial process").

contrast to subsection (a)(13), subsection (a)(14) does not limit the disclosure of outcome information in such cases to the victim, and logically, since the provision permits unlimited public disclosure of outcome information, recipients are not subject to the § 99.33 rule against redisclosure. In further contrast to subsection (a)(13), subsection (a)(14) does not correspond to any statutory disclosure obligation on the part of the institution. No federal law—including subsection (a)(13)—requires the general disclosure of outcome information in these or any other cases. Rather, in response to competing arguments about the relative values of privacy and disclosure in such serious disciplinary cases<sup>3</sup>, Congress opted simply to remove the FERPA prohibition on disclosure in these cases and to allow the institution the discretion to disclose or not as a matter of institutional policy. See 65 Fed. Reg. 41,852, 41,860 (July 6, 2000) (explaining that subsections (a)(13) and (a)(14) do “not require postsecondary educational institutions to disclose the final results of disciplinary hearings to anyone. Thus, the effect of the amendment is that institutions are now free to follow their own policies regarding disclosure of this information.”) (emphasis added.) See also *United States v. Miami Univ.*, 294 F.3d at 812 (“Congress balanced the privacy interests of an alleged perpetrator” with interests of victims and the public and “limit[ed] the amount of information that an institution may release and the people to whom the institution may release such information”).

Consistent with FERPA and the University’s educational philosophy, specific outcome information is generally treated confidentially and not shared with the accuser, who is known as the “complainant” in our system. The University has considered and expressly declined to exercise the discretion allowed it under subsection (a)(14) to disclose the student names, violations and sanctions in particular cases within its scope, reasoning that such disclosures would not serve

---

<sup>3</sup> See, e.g., Hearing on Campus Crime & the Accuracy In Campus Crime Reporting Act of 1997 (H.R. 715) Before the House Committee on Education and the Workforce, 105th Congress (statement of Benjamin F. Clery, President, Security on Campus, Inc.) (advocating “exclusion of [FERPA] protections from” disciplinary proceedings involving “allegations of criminal conduct”); Hearing on Convicted Felons at Colleges Before the House Subcommittee on Postsecondary Education, Training & Life-Long Learning, 104th Congress (statement of Benjamin F. Clery) (advocating that “Congress amend FERPA to specifically exclude from the definition of ‘education records’ any reports maintained by colleges and universities regarding allegations of criminal misconduct”). See also 60 Fed. Reg. 3,465 (declining to adopt the view of “several commenters” who proposed that results of “disciplinary action taken against a student for criminal acts” be excluded from FERPA protection).

the educational mission of the University or its disciplinary system.<sup>4</sup> Georgetown policy thus does not permit public disclosure of outcome information in such cases. The University has reached the opposite conclusion with respect to outcome disclosures to complainants in cases covered by subsection (a)(13), however, and does share specific outcome information with complainants in accord with subsection (a)(13).<sup>5</sup>

---

<sup>4</sup> In September of 2000, in response to University community interest in Georgetown's policies with respect to disclosure of the results of student disciplinary proceedings, Juan C. Gonzalez, Vice President for Student Affairs, charged our Disciplinary Review Committee (DRC) to re-examine our policies and practices in that area, including outcomes disclosures permitted by subsections (a)(13) and (a)(14). He encouraged the Committee to air the issue campus-wide, "examining both the pros and cons that would result from a change in this policy and hearing from all interested parties." See Charge to the Disciplinary Review Committee, 2000-2001 (GU-0000326-327). The Committee worked throughout the 2000-01 academic year. In its final report to Dr. Gonzalez on this issue, dated May 23, 2001, the DRC proposed for inclusion in the Student Handbook a *Statement of Purpose* that articulates the University's mission with respect to student conduct proceedings. See Letter to Dr. Gonzalez from Bethany Marlowe, Chair Disciplinary Review Committee (GU-0000328-335). Against that background, the report *inter alia* reaffirmed the University's policy against public disclosure of names, findings and sanctions in particular cases, despite the institution's permissive authority to do so under subsection (a)(14); advocated the continuation of and modest revision to the terms of outcome disclosure to complainants consistent with subsection (a)(13); and recommended that Student Affairs provide increased information to the University about the outcome of student conduct proceedings in the form by publishing a compilation of offenses and sanctions from the previous semester in a seminannual newsletter. *Id.* The DRC's recommendations were substantially accepted by the Vice President of Student Affairs, and are currently reflected in the University's Handbook, its disclosure policies and practices, and the semiannual newsletter now published by the Office of Student Conduct.

<sup>5</sup> Subsection (a)(13) permits disclosure in some circumstances in which the Clery Act does not require disclosure. Specifically, whereas the Clery Act requires disclosure to the victim in the case of a sex offense only, subsection (a)(13) permits disclosure to the victim of any crime of violence or non-forcible sex offense. As discussed above, for policy reasons Georgetown elects to disclose outcomes to victims in the broader set of circumstances permitted by subsection (a)(13).

Georgetown's Disclosure of Adjudication Outcome Policy (GU-0000060) provides that "[t]he University will disclose the final results of a disciplinary hearing (the name of the student, the violation committed, and any sanction imposed by the University against the student) only to the respondent and, subject to the conditions discussed below, to a complainant or other individual who is the victim of the alleged violation in cases where the facts alleged constitute a crime of violence or non-forcible sex offense as those terms are defined under the Family Educational Rights and Privacy Act ("FERPA")," regardless of whether or not the respondent was found responsible for the violation. *Id.* Consistent with FERPA, the policy provides that such disclosure be conditioned on the complainant or alleged victim's agreement of non-redisclosure, which is recorded in a signed confidentiality agreement. *Id.* That agreement provides that the recipient is not prohibited from sharing the information with his or her parents, who are permitted to attend disciplinary proceedings at their child's request, or with the individual who served as a student consultant or advisor to the recipient during the disciplinary process, as long as those individuals are advised of and abide by the same confidentiality obligations. Finally, the recipient is asked to sign a form acknowledging his or her receipt of the outcome information. Georgetown's policy thus fully satisfies the Clery Act and, consistent with the discretion afforded the institution under the law, provides victims of alleged conduct within the scope of subsection (a)(13) information that may prove helpful in their recovery processes, while respecting the accused student's privacy interests.

B. The Application of the Policy to [REDACTED]

In the spring of 2002, [REDACTED] initiated a student conduct proceeding at Georgetown, in which she charged a University student with a violation of the University's student disciplinary system. The facts that [REDACTED] alleged constituted a crime of violence as that term is defined by FERPA. [REDACTED]—as the complainant and victim of the alleged action—was therefore entitled under the University's Disclosure of Adjudication Outcome Policy to be informed of the final results of the proceedings, regardless of their outcome, on the condition that she agreed to and signed the requisite confidentiality agreement.

Following both the initial hearing and the appeal in her case, [REDACTED] agreed without objection to the condition and was provided the requisite outcome information. It is undisputed that [REDACTED] actually received all information to which she was entitled and thus makes no claim that she was denied information to which she was entitled under either the Clery Act or Georgetown's

policies. Rather, she argues that she should not have been required to agree to non-redisclosure and should be free to disclose the information to others as she chooses.

Her position flies in the face of the explicit FERPA exception—subsection (a)(13)—that corresponds to the Clery Act requirement and of the consistent interpretative advice offered institutions by the Family Policy Compliance Office (“FPCO”) of the U. S. Department of Education (“Department”).<sup>7</sup> As explained in detail above, FERPA requires institutions to condition the non-consensual disclosure of outcome information to victims under subsection (a)(13) on their agreement not to redisclose the information. FPCO has consistently interpreted subsection (a)(13) to provide that “disclosure is limited to the alleged victim, who should be informed that the information may not be disclosed to the public generally.” Attachment A, John Lowery, *LeRoy Rooker on FERPA as a Defender of Education and Privacy Rights on Today's College Campuses*, Synthesis: Law and Policy in Higher Education 716, 717 (Fall 1998) (quoting LeRoy Rooker, Director, FPCO). Indeed, FPCO recently advised the complainant in this matter: “When an institution discloses the final results [to a victim pursuant to § 99.31(a)(13)], it must also inform the student that FERPA does not permit any redisclosure of this information.” Attachment B, Letter from LeRoy Rooker, Director, FPCO, to S. Daniel Carter, dated March 10, 2003, at 3 (“March 10, 2003 FPCO letter”).

---

<sup>7</sup> Complainant Security on Campus, Inc. itself concedes that Georgetown’s policy is consistent with existing Department regulations. In correspondence to FPCO, S. Daniel Carter of Security on Campus noted that FERPA “regulations issued by the Department of Education continue to prohibit the victims of these crimes from publicly redisclosing the ‘final results’” and urged that the FERPA regulations be “rewritten.” Attachment D, Letter from S. Daniel Carter to LeRoy Rooker, Oct. 10, 2002, at 2. See Attachment E, e-mail message from S. Daniel Carter to LeRoy Rooker, Dec. 11, 2002. (“[T]he [FERPA] regulations illegally prohibit violent crime victims from redisclosing the “final results” of student disciplinary proceedings . . .”). FPCO responded that “the Department presently remains legally constrained to conclude that an alleged victim may not redisclose such information.” Attachment B, supra, March 10, 2003 FPCO letter at 2. Having failed to secure FPCO’s support for the regulatory amendment they apparently believe is required to support their position, Security on Campus joined with [REDACTED] to file the instant complaint with your office, in an apparent attempt to find a more favorable forum within the Department. As their prior correspondence shows, complainants’ real complaint is not that Georgetown is violating any of the Department’s directives, but rather with the Department’s regulations themselves. And, as the Department already concluded, the law does not support complainants’ view.

The Department has set forth that interpretation not only in individual correspondence, but also in general policy guidance. In a May 1996 “Dear Colleague” letter (Attachment C), an express purpose of which was to clarify the “interplay” between the Clery Act (then known as the Student Right to Know and Campus Security Act) and FERPA, the Department noted that “[t]he Student Right to Know and Campus Security Act amended FERPA to allow institutions to disclose to the victim of an alleged crime of violence the results of a disciplinary proceeding brought against a student accused of the crime, without the prior consent of the accused,” but the Department stated that “[t]his disclosure is limited to the alleged victim, who should be informed that the information may not be disclosed to the public generally.” (Citation omitted). Available at [http://ifap.ed.gov/dpccletters/doc0092\\_bodyoftext.htm](http://ifap.ed.gov/dpccletters/doc0092_bodyoftext.htm). See 60 Fed. Reg. 3,464 (a section (a)(13) “disclosure is limited to the alleged victim”).

Conditioning subsection (a)(13) disclosures on the recipient’s agreement to maintain confidentiality is in no way inconsistent with the Clery Act. The university must under the Act’s directive provide the results only to “the accuser and the accused.” 20 U.S.C. § 1092(f)(8)(B)(iv)(II); 34 C.F.R. § 668.46(b)(11)(vi)(B). The Clery Act does not require or authorize an institution to publish the results more broadly, nor does it require or authorize redisclosure by the accuser. The statement in the Clery Act regulations that “[c]ompliance with this paragraph does not constitute a violation of [FERPA],” *id.*, means what it says—the disclosure to the accuser and the accused does not violate FERPA. It does not mean that the FERPA nondisclosure provisions do not apply, and the Department has consistently interpreted FERPA to prohibit redisclosure of disciplinary proceeding results by the victim of an alleged crime of violence or non-forcible sex offense since the 1992 Clery Act amendment requiring disclosure to the accuser. See Department interpretations cited, *supra*, at 7-8; H. Rep. 102-630 (June 29, 1992), at 182 (adding 20 U.S.C. § 1092(f)(8)(B)(iv)(II)).<sup>8</sup>

---

<sup>8</sup> Reading 34 C.F.R. § 668.46(b)(11)(vi)(B) to require universities to allow unrestricted nonconsensual redisclosure not only is unsupported by the plain language of that provision, it also violates a black letter rule of statutory construction. To the extent that the Clery Act and FERPA conflict, a court would be constrained to interpret those statutes in a manner that minimized the conflict. See *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 155 (1976); *Silver v. New York Stock Exchange*, 373 U.S. 341, 357 (1963). Applying that interpretive cannon, the two statutes can easily be read in harmony by holding that the Clery Act requires disclosure of the specified disciplinary hearing results to victims of sex offenses, but that FERPA generally prohibits any broader disclosure to non-victims or redisclosure absent consent (except where the institution exercises its discretion under subsection (a)(14) to disclose results more broadly). The more expansive

Indeed, allowing subsection (a)(13) victims unfettered license to redisclose disciplinary proceeding results would upset the balance struck by Congress in the subsection (a)(13) and (a)(14) outcome disclosure exceptions. Rather than allow the university to decide whether or not to use its permissive authority to make public disclosure of adjudicated violations under subsection (a)(14), unrestricted redisclosure would transfer the option to disclose or not to the recipient victim. As a matter of institutional policy, Georgetown does not disclose disciplinary hearing results to the public. That policy decision, which Georgetown believes is in the best interest of all of its students, is fully within Georgetown's statutory discretion. See Attachment F, Letter from LeRoy S. Rooker, Director, FPCO, to Diane Walker, Kennesaw State Univ., Sept. 27, 2002, at 2 (stating that "postsecondary institutions may—but are not required by FERPA to—disclose the final results of disciplinary proceedings in which the institution determines that the student perpetrator committed a crime of violence or non-forcible sex offense"). Congress intended to give that discretion to postsecondary institutions and not subject it to federal regulation. 144 Cong. Rec. H2868 (daily ed. May 6, 1998) (statement of Rep. Foley) (statutory provision corresponding to subsection (a)(14) "does not require any new obligation to disclose these records. On the contrary, it deregulates the issue from Federal purview and allows State public record law and common sense to take over.").

The position apparently advocated by the complainants would effectively erase the distinction between disclosure of disciplinary proceeding results to the victim of a crime and broad publication of those results, a distinction Congress intended to preserve when it created two separate sets of conditions for those two categories of disclosure. Under the complainants' interpretation, the disclosure the Clery Act requires to "the accuser" would be, in effect, if the victim or his or her confidantes so chose, a release of the information into the public domain. Indeed, it would grant the victim recipient broader license to make public disclosure than the law provides to institutions, for subsection (a)(14) countenances the disclosure by universities only in cases in which the student has been found responsible of the specified violations, while subsection (a)(13) allows victims outcome information, regardless of whether the accused is found responsible.

---

reading apparently suggested by complainants—that the Clery Act not only compels disclosure to sex offense victims but also forbids placement of reasonable conditions on redisclosure notwithstanding FERPA's requirement of such conditions—violates that interpretive canon because it creates an unnecessary conflict between FERPA and the Clery Act.

Nothing in FERPA or the Clery Act places the decision whether to publicize the results of student disciplinary proceedings within the discretion of another student. Such an interpretation would thwart the statutory and regulatory scheme, which draws a very clear distinction between, on one hand, disclosure to a victim, which in the case of a sex offense is both mandatory, 34 C.F.R. § 668.46(b)(11)(vi)(B), and subject to the FERPA non-redisclosure requirement, *id.* § 99.33, and, on the other hand, disclosure beyond the victim, which is discretionary with the institution, *id.* § 99.31(a)(14). Congress was asked to mandate the disclosure of all university disciplinary results,<sup>10</sup> but it did not do so. Instead, it required in the Clery Act only that the “accuser and the accused” be provided those results in certain limited circumstances and in FERPA allowed institutions permissive authority to make broader disclosure under an even narrower range of circumstances. Adopting the complainants’ interpretation thus would eliminate an important distinction Congress was careful to maintain.

Congress had a sound basis for drawing that distinction. Quite different policy and educational considerations inform releasing disciplinary results to the victim than to the public. Mr. Loreng’s letter notes that “the United States Congress carved out these exceptions precisely so that victims could use such information in their recovery process and for other purposes.” Loreng letter at 2. Georgetown seeks to achieve that goal by giving students who qualify under subsection (a)(13) access to the outcome information and permitting reasonable redisclosure to parents and an advisor on the condition of non-redisclosure. *See* Disclosure of Adjudication Outcome Policy, GU-0000060. Congress wisely did not see fit to entrust to individual students the decision whether and how to publicize institutional disciplinary proceeding results more broadly, and the Department of Education has to date prudently and appropriately respected that judgment.

The complainants seem to object to Georgetown’s policy of requiring the recipients of confidential disciplinary proceeding results to sign a non-redisclosure agreement. The Department expressly approved such a policy in the past. *See* 41 Fed. Reg. 24,462, 24,671 (June 17, 1976) (institutions may “adopt[ ] a policy requiring a written assurance from a third party before disclosing

---

<sup>10</sup> See Hearing on Campus Crime & the Accuracy In Campus Crime Reporting Act of 1997 (H.R. 715) Before the House Committee on Education and the Workforce, 105th Congress (1997) (statement of Benjamin F. Clery, President, Security on Campus, Inc.); Hearing on Convicted Felons at Colleges Before the House Subcommittee on Postsecondary Education, Training & Life-Long Learning, 104th Congress (1996) (statement of Benjamin F. Clery).

information from the education records of a student"). Using written agreements enhances Georgetown's ability to assure that the recipient understands the conditions of the disclosure and provides a record both of the student's agreement and of the disclosure itself. The University's use of a written agreement to effectuate both the disclosure rights of the accuser and the privacy rights of the accused under federal law is both responsible and appropriate.

In this connection, Mr. Loreng's letter states that "the protections granted by FERPA principally rest with the affected students not the University." Loreng letter at 2. Although it is not entirely clear, we understand Mr. Loreng to suggest that that Georgetown need not, to satisfy its own responsibilities under FERPA, obtain written assurance that the recipient will not redisclose disciplinary proceeding results, because once the university discloses the information the responsibility for safeguarding it rests with the recipient. FERPA requires institutions to do more than that to protect the privacy interest of the accused. FERPA permits an institution to make a subsection (a)(13) disclosure of disciplinary information concerning an accused student "only on the condition that" the recipient will not redisclose the information without consent. 34 C.F.R. § 99.33(a)(1). The institution must maintain a written record of the disclosure, and if the recipient rediscloses the information, the institution must maintain a record that identifies any further recipients and their "legitimate interests" in the information. *Id.* § 99.32. If a third party makes an unauthorized redisclosure, FERPA prohibits the institution from providing education record information to that party for at least five years. 20 U.S.C. § 1232g(b)(4)(B); 34 C.F.R. § 99.33(e). FERPA generally places upon the institution the responsibility to protect the confidentiality of education records and authorizes the Department to exercise FERPA enforcement power over institutions, not directly over individuals to whom the university discloses education records. We do not understand an institution's responsibility to protect the privacy of education records to end once the institution discloses the records under a specific FERPA exception. If an institution's responsibility did end there, the Department would lack any subsequent means to enforce FERPA because FERPA gives the Department no direct authority over students to prevent them from redisclosing information they have obtained from education records. *See* 34 C.F.R. § 99.67.34 C.F.R. § 99.33.

\* \* \* \*

Georgetown now responds sequentially to each of the numbered requests for information in Mr. Loreng's letter. Each request is reprinted in bold type and the University's response follows in regular type. Please note that certain of the requests are very broadly worded, and Georgetown has done its best to produce responsive and relevant information, although perhaps not exhaustive information, in response to each. Should we discover additional information that

bears substantially upon any of these issues, we will promptly supplement our responses.

**1. All policies and procedures regarding Georgetown's judicial board process including but not limited to the composition of the tribunal, its mission, a statement on its theory of "punishment," and its methods for imposing and enforcing sanctions.**

In response to Request No. 1, please find a copy of Section 4 of the Georgetown University's current Student Affairs Student Handbook, which is entitled "Student Conduct," as that section appears on the University's website at [www.georgetown.edu/student-affairs/stconduc](http://www.georgetown.edu/student-affairs/stconduc) (GU-0000001--60) and a copy of the Georgetown University Office of Student Conduct Judicial Hearing Board Training Manual 2002-03 (GU-0000061--145). Of particular relevance here, please note the Disclosure of Adjudication Outcome Policy in the Student Conduct Code (GU-0000060), and the sample Confidentiality of Adjudication Outcome Agreement (GU-0000143) and Acknowledgement of Adjudication Outcome Forms in the Training Manual (GU-0000144).

**2. A presentation of the legal authority that the University relied upon in the construction of its nondisclosure agreement policy. This response should state with particularity why these agreements do not violate the relevant sections of the Clery Act and/or FERPA discussed above and why these Federal statutes do not preempt this University policy.**

Georgetown's response to Request No. 2 is set forth in the preceding discussion at pages 1-11 of this letter.

**3. A response to the allegation raised by the complainants that they are barred even from sharing judicial outcomes and sanctions with certain close family members and non-University related legal or mental health counselors.**

In response to Request No. 3, Georgetown respectfully refers you to the terms of its Confidentiality of Adjudication Outcome Agreement (GU-0000143). The University has no desire to intrude in any way in a therapeutic relationship between a student and a mental health counselor or other confidential advisor; nor do we understand either subsection (a)(13) or subsection (a)(14) to permit the University to authorize such nonconsensual redisclosure by the victim recipient.

**4. An accounting of how many cases have gone before the judicial board and the number of non-disclosure agreements that have been executed by calendar year for 1999, 2000, 2001, 2002, and thus far in 2003. Please also advise**

**whether or not non-disclosure agreements are required to access outcomes and sanctions in all judicial cases or only in specific types of cases.**

In response to the request for an accounting of the number of cases heard by judicial boards, including both hearing and appeals boards, and the number of non-disclosure agreements executed during the specified years, Georgetown provides the following information:

2003 (to date)

Number of cases heard by judicial boards: 1

Number of confidentiality agreements executed: 1

2002

Number of cases heard by judicial boards: 6

Number of confidentiality agreements executed: 6

2001

Number of cases heard by judicial boards: 9

Number of confidentiality agreements executed: 4

2000

Number of cases heard by judicial boards: 23

Number of confidentiality agreements executed: 9

1999

Number of cases heard by judicial boards: 10

Number of confidentiality agreements executed: Not available

Please note that cases in which outcome disclosure is available under our policies are not necessarily heard by judicial boards; e.g., in a case in which the accused student acknowledges responsibility, a matter could be resolved by administrative action. Nor do cases heard by judicial boards necessarily involve charges for which outcome disclosure is available to the complainant under our policies; e.g., incivility with a University official, drug or theft offenses, and various other offenses do not fall within the scope of subsection (a)(13) or the University's outcome disclosure policy.

In further response to Request No. 4, as the discussion above makes clear, non-consensual disclosure of information about outcomes and sanctions to complainants in Georgetown's Student Conduct system is the exception, not the rule, and is made only under the circumstances described in the Disclosure of Adjudication Outcome Policy (GU-0000060).

5. A description of any and all other disciplinary, judicial and/or alternative dispute resolution systems in place at the University. This response should cover any special programs or systems of adjudication in place for athletic programs, fraternities or sororities, residence life, and/or Colleges and schools within the University. Please provide statistics on the number of cases that have come before each board and the number of non-disclosure agreements executed as a condition of accessing information on outcomes reached and sanctions imposed by each board.

In response to Request No. 5, Georgetown refers you to the Student Conduct Code produced herewith in response to Request No. 1 and additionally provides a copy of the Residential Judicial Council Handbook Spring 2003 (GU-0000146—218) and a copy of the Residential Judicial Council Training Manual Spring 2002 (GU-0000219—296). In addition, Georgetown provides the following summary description of the responsibilities exercised within the Student Conduct system by the Office of Student Conduct, the Residential Judicial Council, and the Office of Off Campus Student Life:

*The Office of Student Conduct*

The Director of Student Conduct is responsible for properly implementing fair judicial procedures and overseeing the administration of the University's undergraduate and graduate student adjudication system. This includes the identification of potential violations of the *Code of Student Conduct*. Additionally, depending on whether the student resides in University owned housing or off campus, the Director refers matters for resolution to either the Department of Residence Life or the Office of Off Campus Student Life, respectively, of all Category "A" level and most Category "B" level violations\* when a student admits responsibility. The Director handles the investigation and presentation of any Category "B" level violation for which students deny responsibility and all Category "C" level cases on behalf of the University to Judicial Hearing and Appeal Boards and the resolution through Administrative Action of applicable Category "B" level and all "C" level cases for which students accept responsibility. In addition, to be responsive to students' increased interest in alternatives to adjudication, the Office of Student Conduct is willing to facilitate mediation when appropriate.

\*The following Category "B" violations are resolved exclusively by the Office of Student Conduct: Stalking, Sexual Misconduct, Harassment, Physical Assault, and Falsification of University Records.

*The Residential Judicial Council.* The Residential Judicial Council (RJC) operates under the direction of the Office of Residence Life. The RJC serves as an extension of the disciplinary authority of Hall Directors (HD); and, therefore takes

administrative action against students who reside in University owned housing (regardless of where the incident occurred). There are a total of six Councils and each consists of at least 3 residence hall student members and 1 HD advisor. In keeping with the disciplinary authority of the HD, the RJC handles all Category "A" level and most Category "B" level violations\* when a student admits responsibility to the HD for engaging in behaviors or actions that may constitute a Category "B" violation.

During the 2002-2003 academic year, the RJC focused on hearing cases that had an impact on the overall residence hall community such as noise, safety violations and destruction of property. Under normal circumstances, students who admit responsibility for first-time alcohol offenses are handled by the HD. On occasion, when deemed educational by the HD, the case may be sent to the RJC to be heard by the student's peers. The decision as to which Category "A" and applicable "B" level violations committed by residence hall students will be referred to the RJC, as opposed to being handled by the HD, is made at the sole discretion of Residence Life Senior Staff.

*The Office of Off Campus Student Life.* The Office of Off Campus Student Life (OCSL) works with the Office of Student Conduct to administer the *Code of Student Conduct* for students who reside off campus. In handling cases involving off campus students, OCSL reviews alleged violations of all Category "A" level and most Category "B" level violations\* when a student admits responsibility and local laws and ordinances; and when appropriate, issues sanctions.

\*The following Category "B violations are resolved exclusively by the Office of Student Conduct: Stalking, Sexual Misconduct, Harassment, Physical Assault, and Falsification of University Records.

In further response to Request No. 5, and in particular response to the request for statistics on the relative number of cases resolved through the different administrative channels, Georgetown advises, for example, that during calendar year 2003, one case has been heard by a judicial hearing board and 456 have been resolved by administrative action—27 by the Director of Off Campus Student Life, 52 by the Coordinator of Off Campus Student Life, 153 by the Residence Life Senior Staff, and 224 by the Residential Judicial Council, respectively. The single confidentiality agreement executed in connection with an adjudication outcome disclosure in 2003 related to the matter heard by the hearing board.

6. Copies of all relevant publications including Campus Security Reports, Students Handbooks, and any other documentation provided to staff and students that address any and all of the University's adjudication programs.

In response to Request No. 6, and in addition to the materials already produced in response to Requests 1-5, Georgetown provides copies of *The Crime Awareness and Campus Security 2002 Annual Report* (GU-0000297—312) and *Office of Student Conduct Public Disclosures of University Student Disciplinary Proceedings* for Fall 2002 and Spring 2002 (GU-0000313-335).

**7. Copies of all relevant documents developed by the Office of Student Conduct or other office that administers any other student adjudication program to include information on jurisdiction, policies, procedures, missions, sanctioning guidance, and enforcement mechanisms.**

In response to Request No. 7, Georgetown respectfully refers you to materials produced herewith in response to the previous requests, especially Request Nos. 1, 5, and 6.

**8. An explanation of the University's policies and procedures for "aftercare" for victims of sexual assaults and other violent crimes to include counseling resources, healthcare, residence life programs, and other initiatives or accommodations.**

In response to Request No. 8, Georgetown provides the following overview of sexual assault services provided by the University to its students:

*The Sexual Assault Services Coordinator.* Since 1996 Georgetown University has employed a full-time employee whose primary responsibility is to coordinate sexual assault services for students. This position, which is entitled the Sexual Assault Services Coordinator and is housed in Health Education Services, is responsible for providing free individual services to students and ongoing training, education and outreach to the University community. The Sexual Assault Services Coordinator, or, in his or her absence, another individual trained in sexual assault services, is available by pager 24 hours a day.

Services provided include:

1. Act as liaison and/or accompany students, at their request, to:
  - Emergency Room for medical exam and rape kit testing
  - Primary Health Care Clinic for medical exam
  - Department of Public Safety to make a campus crime report
  - Metropolitan Police Department to make a police report
  - Office of Student Conduct to file a complaint
  - Office of Affirmative Action Programs to file a complaint
  - Court proceedings

2. Give students information about:
  - Georgetown University's Sexual Assault policy
  - Sexual Assault - general
  - Sexual Assault - adjudication process
  - Sexual Assault - how to help a friend
  - Sexual Assault - reporting to DPS or Metro Police
  - Sexual Harassment – affirmative action process
  - Drugs that induce memory loss/facilitate sexual assault, e.g. Rohypnol/GHB
  - Stalking
  - Relationship violence
  - Filing a restraining order
  - Safety planning
3. Make referrals to:
  - Student Primary Care Clinic—Sexual Assault Services provides payment for medical care when necessary
  - Counseling and Psychiatric Services (CAPS provides for up to nine free visits for students who have been victims of sexual assault)
  - Outside therapist—University provides for up to nine free visits to an off-campus therapist for students who have been victims of sexual assault)
  - Office of Affirmative Action Programs
  - GU Sex Discrimination Legal Clinic
4. Provide intervention at student's request to:
  - Academic Dean's Office to facilitate, as necessary, extensions on academic work, withdrawals or class changes
  - Professors (i.e. write letters regarding missed classes or to request other academic assistance)
  - Office of Residence Life (i.e. speak to senior staff to inform him/her about a situation)
  - Housing, e.g. to arrange safe and/or temporary housing, room changes, lock changes
  - University Information Services to facilitate phone number and/or email changes
  - U.S. Attorney's Office
5. Follow up with students regarding:
  - Safety
  - Adjudication/Affirmative Action process
  - Status of cases in the court system
  - Ongoing concerns and health status

6. Health Education Services provides many print materials for students regarding sexual assault, including University produced pamphlets such as:

“If someone you know has been Sexually Assaulted”

- Outlines how to be there for a friend
- Gives all resources at Campus for friend and victim

“If you’ve been Sexually Assaulted”

- Outlines what to do after an assault
- What can be done in the Emergency room
- How to collect evidence
- What you may feel as a victim
- Resources for victim

Health Education Services has online resources available through the website at [www.georgetown.edu/student-affairs/healthed/SAS.html](http://www.georgetown.edu/student-affairs/healthed/SAS.html).

*Residence Life Support.* The Office of Residence Life within Georgetown’s Office of Student Affairs works with its Resident Advisors to provide sexual assault services in accordance with the following protocol. Upon learning of an incident the Resident Assistant (RA) should inform the student of the RA obligation to share information with his/her superior and give the student the option of speaking with that superior directly.

The RA should offer to page or call the Sexual Assault Services Coordinator, who can provide assistance in understanding, evaluating, and choosing among the services described in this protocol.

Because of the profound impact that sexual assault may have on the student and the residence hall community, Resident Assistants (RAs) are not to keep knowledge of a sexual assault confidential. RAs are required to report this information to the Sexual Assault Services Coordinator (SASC) and to their supervisor. Beyond these specific contacts, RAs are required to keep this information in the strictest confidence. Upon learning of a sexual assault, the RA should immediately contact their Residence Life senior staff member and the SASC. The senior staff member should notify the Director of Residence Life.

The RA should provide immediate support and assist with short-term problem solving. The primary goal should be to help the student secure needed professional services. The RA does not need to provide ongoing peer counseling but should touch base with the victim as needed.

If the student does not wish to talk to the SASC, the RA should ask the student to consider taking advantage of counseling services on- or off-campus and should offer to accompany the student to an appointment if the student so wishes. The RA should remind the student that all counseling contacts are voluntary and confidential. The RA should volunteer to assist with scheduling an appointment.

If the student has reported the crime to the RA within 24 hours of its occurrence, the RA should encourage the student to go to the Student Primary Care Clinic or Emergency Room for medical services and offer to accompany the student.

The RA should provide the student with pamphlets on sexual misconduct and the Anonymous Incident Information Form.

If the student has financial concerns, the RA should refer the student to the SASC for assistance.

The RA should ask if the student feels safe in her or his current housing situation and offer to assist in making alternate housing arrangements if the student has any concerns.

Senior Staff should respond in a similar way as RAs.

To assist their performance of their responsibilities in this area, RAs are asked to complete the following form in connection with any incident that comes to their attention.

Instructions: RAs or their supervisors should complete this form, based either on discussions with an RA or on direct discussions with a student reporting an incident (if the student has declined to speak with a supervisor, this will be a report of the actions taken by the RA). Please refer to the full protocol for more information about each step.

\_\_ The RA should inform the reporting student of the RA's obligation to share information with his/her superior and give the student the option of speaking with that superior directly.

\_\_ The RA should encourage the student to speak directly with the Sexual Assault Services Coordinator for support in understanding, evaluating and choosing among the services described in this protocol and should offer to page or call the coordinator.

\_\_ The RA should ask the student to consider taking advantage of counseling services available on and off campus and offer to accompany the student to an appointment.

\_\_ The RA should encourage the student to go to the Student Health Clinic or Emergency Room for medical services and offer to accompany the student, within 24 hours after the incident.

\_\_ The RA should inform the student that the DC Rape Crisis Center provides a 24-hour hotline and crisis intervention services and should provide their phone number.

\_\_ The RA should provide pamphlets regarding sexual misconduct.

\_\_The RA should immediately contact the Sexual Assault Services Coordinator, after the student has left.

9. All internal guidance, policies, and procedures for the issuance of "timely warnings" as required by the Clery Act. Please advise if a timely warning was issued in the Dieringer case. If a warning was issued, please provide a copy. If one was not, please explain why a warning was not issued.

In response to Request No. 9, and in addition to materials previously produced in response to Request No. 6, please find the policy of the Georgetown University Department of Public Safety on Campus E-Mail Alerts (GU-0000325). The incident involving [REDACTED] occurred in September 2001, but was not reported to campus security authorities until approximately seven months later. In DPS's view, the relevant factors, including but not limited to the passage of time between the alleged incident and its report, did not indicate the ongoing threat to students and employees that triggers a "timely warning" and none was issued.

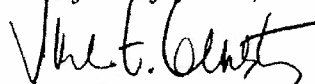
10. Copies of all documents necessary to support any and all representations made and positions taken in your response.

Relevant materials not otherwise provided in response to a specific numbered request are referenced in the University's discussion of its position, supra at 1-11, and appended hereto as Attachments A through F or as GU-0000326-335.

\* \* \* \* \*

Georgetown takes very seriously its obligations with respect to all of its students and has thoughtfully and caringly crafted an adjudication outcome disclosure policy to meet our legal and educational responsibilities to them. Georgetown believes in utmost good faith that our policy complies with the Clery Act, FERPA, the applicable regulations and the consistent and logical policy guidance from the Department. We appreciate your consideration of this response. Please contact me at (202) 687-6500 if you have questions or need additional information. I would welcome the opportunity to meet with representatives of your office and, if you believe it productive, of FPCO to discuss this matter.

Very truly yours,



Jane E. Genster

Vice President and General Counsel



GEORGETOWN UNIVERSITY

RECEIVED

AUG 17 2004

PHILADELPHIA CASE  
MANAGEMENT TEAM

Copy for  
Moore  
Loring

Vice President and General Counsel  
202-687-5417

August 16, 2004

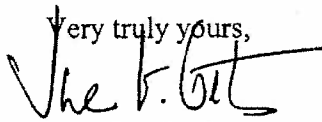
**VIA FACSIMILE AND OVERNIGHT MAIL**

M. Geneva Coombs  
Director, Case Management Teams – Northeast  
U.S. Department of Education  
Union Center Plaza  
830 First Street, N.E.  
Room 73D1  
Washington, DC 20202

Dear Ms. Coombs:

In compliance with your letter of July 16, 2004, which Georgetown University received on July 22, 2004, enclosed please find the University's revised Disclosure of Adjudication Outcomes policy. For your convenience, I have highlighted the responsive revision in the policy. We look forward to the additional guidance promised on these issues from the Department of Education.

Please free to contact me with any questions or concerns.

Very truly yours,  
  
Jane E. Genster

Enclosure

cc: Nancy P. Klingler, Area Case Director, Philadelphia Case Management Team ✓

**\*REVISED**

**DISCLOSURE OF ADJUDICATION OUTCOME POLICY**

The University will disclose the final results of a disciplinary hearing (the name of the student, the violation committed, and any sanction imposed by the University against the student) only to the respondent and, subject to the conditions discussed below, the complainant or other individual who is the victim of the alleged violation in cases where the facts alleged constitute a crime of violence or non-forcible sex offense as those terms are defined under the Family Educational Rights and Privacy Act ("FERPA").

Except in cases of alleged sex offenses, such disclosure to a complainant or alleged victim will be made only on the condition that he or she agrees to and signs the confidentiality agreement set forth in the *Disclosure of Adjudication Outcome Form* prior to the release of the information. The complainant or victim will not be prohibited from sharing the final results with his or her parents and the individual who served as his or her advisor or student consultant during the disciplinary process, as long as those individuals are advised of and abide by the same confidentiality obligations. If a student fails to maintain the confidentiality of the information, he or she may be held accountable under the Code for violation of confidentiality and may be subject to appropriate disciplinary action.

Such disclosure will be made to a complainant or alleged victim irrespective of a finding of responsibility. The disclosure will be made after the appropriate administrator or hearing board decides whether a violation of the Code has occurred, regardless of whether an appeal is taken.

In addition, statistics reflecting the number of cases handled by the student disciplinary system and the sanctions imposed will be periodically published.